

**ADVISORY OPINION NO. 91-89**

**ISSUED BY THE**

**WEST VIRGINIA ETHICS COMMISSION**

**ON JANUARY 9, 1992**

**GOVERNMENTAL BODY SEEKING OPINION**

A County Attorney

**OPINION SOUGHT**

- a. Whether it is a violation of the Ethics Act for a County Sheriff to reappoint the nephew of the Jail Administrator to the position of Correctional Officer?
- b. Whether it is a violation of the Ethics Act for a County Commission to approve the Sheriff's reappointment of a Correctional Officer who is the nephew of the Jail Administrator?

**FACTS RELIED UPON BY THE COMMISSION**

A County Sheriff would like to rehire a Correctional Officer at the jail and such action must be approved by the County Commission. This individual had previously resigned and now seeks reinstatement to the position.

West Virginia Code §7-14B-8 provides that any person who formerly served as a correctional officer is eligible for and may seek reinstatement to the position for a period of two years. The applicant is eligible for appointment by reinstatement at the discretion of the Civil Service Commission and is not required to take the competitive examination.

The individual's request for reinstatement was submitted within the two year time frame and has been approved by the Correctional Officers Civil Service Commission. At the time of the individual's reinstatement there existed an eligibility list of candidates who had passed the Civil Service exam and were awaiting an opening within the Department.

The reinstated Correctional Officer is not related to the Sheriff or any member of the County Commission. However, he is the nephew of the Jail Administrator and would fall under the Administrator's indirect supervision.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code §6B-2-5(b)(1) states in pertinent part that...a public official...may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person...

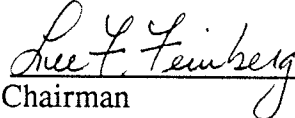
**ADVISORY OPINION**

Pursuant to WV Code §6B-2-5(b)(1), a public official may not use his office or the resulting prestige for the private gain of another. Nepotism would fall within the purview of this section and is considered a violation of the Ethics Act.

Nepotism is defined by the Commission as favoritism shown or patronage granted by persons in high office to relatives or close friends without consideration of other applicants or qualifications required to perform the job. The reinstated Correctional Officer is not related to the Sheriff or any member of the County Commission. Even though the Correctional Officer is the nephew of the Jail Administrator and would fall under his indirect supervision, the Administrator does not have authority or control over the selection of candidates to fill vacancies within the jail.

Further, the application for the reinstatement of the Correctional Officer was submitted according to the procedures outlined in West Virginia Code §7-14B-8 and such application has been approved by the Correctional Officers Civil Service Commission.

Therefore, it would not be a violation of WV Code §6B-2-5(b)(1) for the County Sheriff or the County Commission to hire a Correctional Officer who is the nephew of the Jail Administrator.

  
Chairman